IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL REVISION APPLICATION NO.307 OF 2007

Smt. Barkibai Undir Gharat & Ors. ...Applicants.
v.
M/s. Madhuraj Engineers & Builders & Ors....Respondents.

Mr.Rafeeq M., adv. for the Applicants.

Mr.A.V.Anturkar with Pankaj R. Thatte, advs. for the Respondent No.1.

CORAM: J.H.BHATIA,J.
DATE: 13th December,2007.

P.C.

1. Heard the learned counsel for the Parties.

2. The revision applicants are the original defendant nos.1 to 8 having certain leasehold rights on the property of CIDCO. The defendant nos.9 to 11 are the authorities of CIDCO. Having obtained certain leasehold rights, the present applicants entered into an agreement with the respondent no.1/plaintiff and agreed to transfer development rights over that immovable property. Development rights agreement was executed by the parties on 25th October, 2005. Some disputes arose between the parties and the plaintiff/respondent no.1 filed Special Civil Suit No.253 of 2007 for specific performance of the contract in the Court of Civil Judge Senior Division, Pune. In the number of prayers made in

the suit, he also sought perpetual injunction against the CIDCO authorities not to enter into any agreement with the defendant nos.1 to 8 or third party. After service of summons, the defendants who are the revision applicants moved an application before the trial Court for reference of the dispute to the arbitrator in view of the Clause 22 of the agreement between the parties. It was contended that in case of any dispute or difference amongst the parties arising from or concerning any part of this agreement or interpretation thereto it shall be subject to the arbitration under the provisions of Indian Arbitration Act, 1996. The application was opposed by the plaintiff contending that the defendant nos. 1 to 8 had sought certain reliefs against the CIDCO and its authorities and the CIDCO is not party to the development agreement and, therefore, the CIDCO can not be bound by the terms of the said agreement and, therefore, the matter can not be referred to the arbitrator. It was further argued that the defendant no.1 had not pointed out which particular clause of that agreement is in dispute and, therefore, also it can not be stated to be a dispute between the parties pertaining the said agreement.

3. After hearing the parties, the learned trial Court rejected the application holding that there was no dispute or difference amongst parties with respect to interpretation of any part of the agreement and,

therefore, the matter can not be referred to the arbitrator. In view of rejection of said application to refer the dispute to the arbitrator, the defendant nos.1 to 8 have preferred the present revision application.

4. Admittedly, no agreement except development rights agreement dated 25th October, 2005 has been entered into between the plaintiff and the defendant nos.1 to 8. Under that agreement the defendant nos.1 to 8 have assigned or agreed to assign the development rights on the immovable property on which the defendants have got lease hold rights from the CIDCO. The plaintiff gets development rights over that property under that agreement only and he has filed the suit for specific performance of the said agreement only. Admittedly, the suit was required to be filed because the dispute arose between the parties about the terms of the said agreement and the plaintiff faces difficulties in carrying out the development of that property because of this dispute. Paragraph 22 of the said agreement provides for reference of the disputes to the arbitrator. It reads as follows:

> "22. The parties herein agree that in case of any dispute or difference amongst them arising them from or concerning any part of this Agreement or interpretation hereof shall be subject to the Arbitration under the provisions of Indian Arbitration Act, 1996."

Under Section 8 of the Arbitration and Conciliation Act, 1996 if an action is brought in a matter which is the subject of an arbitration agreement, and if a party so applies not later than when submitting his first statement on the substance of the dispute, the judicial authority shall refer the parties to the arbitration. In the present case, admittedly immediately after service of suit summons, the defendant nos.1 to 8 made an application and requested the trial Court to refer the dispute to the arbitrator. The learned trial Court observed as follows in paragraph 3 of the impugned order:

> 3) .....The plain interpretation of the said clause according to me is that if there is any dispute or difference amongst the parties with respect to the interpretation or any part of the agreement then and then the matter is to be referred to the arbitration, otherwise not. There is no dispute amongst the parties with respect to the interpretation of the agreement or concerning any part of the agreement. It is the specific contention of plaintiff that the defendant nos.1 to 8 in spite of receipt of huge amount are intending to create third party interest in the suit property and therefore, the plaintiffs have no alternative but to file the present suit. Moreover, as per clause 14 of the said agreement, it has been specifically mentioned that builder and developers would be entitled to demand specific performance of entirely at discretion of the builder and developers deciding to rescind this agreement in that case the Vendor shall refund the amount paid and spend by the builder and developers or the project alongwith compensation till date with interest 24% p.a. till final payment. This makes itself clear that builder i.e., plaintiff has right to file as suit for specific performance of the said agreement."

On reading these observations, it becomes clear that there is dispute between the parties about the execution of the agreement of development but the learned trial Court rejected the prayer to refer the dispute to the arbitrator only because according to the trial Court the matter can be referred to the arbitrator only when there is difference and dispute amongst the parties with respect to the interpretation or any part of the agreement and as there is no dispute with respect to the interpretation of the agreement or concerning any part of the agreement, it can not be referred to the arbitrator. In fact the Clause 22 of the Agreement provides the two circumstances in which the dispute can be referred to the arbitrator. Firstly, when there is dispute or difference among the parties arising from and concerning any part of the agreement and secondly, when there is dispute about the interpretation of such agreement.

5. Mr.Anturkar the learned counsel for the plaintiff/respondent no.1 vehemently contended that the defendants have not specifically pointed out any particular clause about which there is dispute between the parties and, therefore, according to him, there is no dispute under the agreement, which can be referred to the arbitrator. In my considered opinion, this will not

be proper approach to understand the matter. Mr.Anturkar conceded that there is no agreement other than the development rights agreement dated 25th October, 2005 between the parties. The suit filed by the plaintiff is for specific performance of that agreement only and not of any other agreement. He would not be required to file the suit for specific performance of that agreement unless there was some dispute between the parties. The very fact that the plaintiff has filed the suit for specific performance of that agreement shows that there is dispute between the parties about the terms of the said agreement or about implementation of those terms. Therefore, as per the terms of the agreement between the parties, any such dispute or difference is required to be referred to the arbitration. The learned trial Court committed error in rejecting the prayer of the defendant nos.1 to 8 to refer the dispute to the arbitration.

6. The contention that the defendant nos.9 to 11, who are the authorities of CIDCO are not parties to that agreement and, therefore, the matter can not be referred to the arbitration is also unacceptable. The plaintiff does not have any dispute with those authorities . Certain directions are sought against the defendant nos.9 to 11 only pending the dispute between the plaintiff and the defendant nos.1 to 8 in respect of the said agreement. If the matter is referred to the

arbitrator, any of the parties may seek appropriate direction or interim reliefs pending the arbitration.

7. Taking into consideration all these circumstances and specific agreement between the parties, revision is allowed. The impugned order is hereby set aside. Application Exhibit 26 filed by the defendant nos.1 to 8 under Section 8 of the Arbitration and Conciliation Act, 1996 is allowed. The dispute between the parties be referred to the arbitration. Parties shall take steps to nominate the arbitrator in the trial Court within six weeks.

(J.H.BHATIA,J.)